

Introduced by

1 A BILL for an Act to create and enact sections 49-21-31, 49-21-32, 49-21-33, 49-21-34,
2 49-21-35, 49-21-36, and 49-21-37 of the North Dakota Century Code, relating to a universal
3 service fund; to amend and reenact section 49-02-01.1 of the North Dakota Century Code,
4 relating to the power of the public service commission; to repeal section 49-21-01.8 of the North
5 Dakota Century Code, relating to services provided by an eligible telecommunications carrier;
6 and to provide for a continuing appropriation.

7 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

8 **SECTION 1. AMENDMENT.** Section 49-02-01.1 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **49-02-01.1. Jurisdiction of commission limited as to certain utilities.** Nothing in
11 this chapter or in chapter 49-21 authorizes the commission to make any order affecting rates,
12 contracts, services rendered, adequacy, or sufficiency of facilities, or the rules or regulations of
13 any public utility owned and operated by the state or by any city, county, township, or other
14 political subdivision of the state or any public utility, that is not operated for profit, that is
15 operated as a nonprofit, cooperative, or mutual telecommunications company or is a
16 telecommunications company having fewer than eight thousand local exchange subscribers.
17 However, any telecommunications utility that is operated as a nonprofit, cooperative, or mutual
18 telecommunications company or has fewer than eight thousand local exchange subscribers is
19 subject to sections 49-21-01.4, 49-21-02.4, 49-21-08, 49-21-23, 49-21-24, and 49-21-25,
20 subsections 6 through 14 of section 49-21-01.7, and to sections 49-21-01.2, 49-21-01.3,
21 49-21-06, 49-21-07, 49-21-09, and 49-21-10, regarding rates, terms, and conditions of access
22 services or connection between facilities and transfer of telecommunications between two or
23 more telecommunications companies. Nothing in this section limits the authority of the
24 commission under chapter 49-03.1 or sections 49-04-05 and 49-04-06. Any

telecommunications company that is operated as a nonprofit, cooperative, or mutual telecommunications company or has fewer than eight thousand local exchange subscribers is subject to sections 49-21-31 through 49-21-37 regarding universal service.

SECTION 2. Section 49-21-31 of the North Dakota Century Code is created and enacted as follows:

49-21-31. Definitions. Notwithstanding section 49-21-01.1, as used in sections 49-21-32 through 49-21-37, unless the context otherwise requires:

1. "Station" means a subscriber service address located in this state with a distinct call number designation or distinct extension number designation. If this is not a defined location, "station" means the location of the primary use of telecommunications equipment as determined by telephone number, authorization code, or billing address.
2. "Telecommunications carrier" means a company that is engaged in the business of furnishing telecommunications service within this state. The term includes a reseller of telecommunications service.
3. "Telecommunications service" means transmitting for consideration of two-way communication by wire, cable, fiber optics, radio, lightwave, microwave, satellite, or other means. The term includes:
 - a. Essential telecommunications service and nonessential telecommunications service as defined in section 49-21-01;
 - b. Telecommunications service that originates and terminates in this state and is billed to a station in this state;
 - c. Interstate telecommunications service that originates or terminates in this state and is billed to a station in this state; and
 - d. Telegraph service.

SECTION 3. Section 49-21-32 of the North Dakota Century Code is created and enacted as follows:

49-21-32. Determination of eligible carrier status - Universal service support.

1. The commission is authorized to designate telecommunications carriers as eligible for federal universal service support, in accordance with 47 U.S.C. 214(e)(1) and 47 U.S.C. 254, and for any state universal service funds. This authorization

1 applies to all telecommunications carriers notwithstanding the carrier's exemption
2 from regulation by the commission.

3 2. Upon the petition of a telecommunications carrier, or upon its own motion, the
4 commission shall designate a telecommunications carrier that meets the
5 requirements of 47 U.S.C. 214(e)(1) as an eligible telecommunications carrier for a
6 service area designated by the commission. In the case of an area served by a
7 rural telephone company, the term "service area" means the company's "study
8 area" for federal universal service support unless the federal communications
9 commission establishes a different definition of service area for the company. The
10 term "service area" for all other telecommunications carriers means a geographic
11 area such as a census block or grid block as established by the commission for the
12 purpose of determining federal universal service obligations and support
13 mechanisms.

14 3. Upon receiving a petition from a telecommunications carrier and consistent with the
15 public interest, convenience, and necessity, the commission may, in the case of an
16 area served by a rural telephone company, and shall, in the case of all other areas,
17 designate more than one telecommunications carrier for a service area, so long as
18 each additional requesting telecommunications carrier meets the requirements of
19 47 U.S.C. 214(e)(1). Before designating an additional eligible telecommunications
20 carrier for an area served by a rural telephone company, the commission shall find
21 that the designation is in the public interest.

22 4. If no telecommunications carrier will provide the services that are supported by
23 universal service support mechanisms under 47 U.S.C. 254(c) to all or a part of an
24 unserved community that requests service, the commission shall determine which
25 telecommunications carrier is best able to provide the service to the requesting
26 unserved community. Any telecommunications carrier ordered to provide service
27 under this section shall meet the requirements of 47 U.S.C. 214(e)(1) and must be
28 designated as an eligible telecommunications carrier for that community or the
29 unserved portion of the community.

30 5. The commission shall permit an eligible telecommunications carrier to relinquish its
31 designation as an eligible carrier in any area served by more than one eligible

telecommunications carrier. An eligible telecommunications carrier that seeks to relinquish its eligible telecommunications carrier designation for an area served by more than one eligible telecommunications carrier shall give advance notice to the commission of the relinquishment. Prior to permitting a telecommunications carrier designated as an eligible telecommunications carrier to cease providing universal service in an area served by more than one eligible telecommunications carrier, the commission shall require the remaining eligible telecommunications carrier to ensure that all customers served by the relinquishing carrier will continue to be served and shall require sufficient notice to permit the purchase or construction of adequate facilities by any remaining eligible telecommunications carrier. The commission shall establish a time, not to exceed one year after the commission approves relinquishment under this section, within which the purchase or construction must be completed.

SECTION 4. Section 49-21-33 of the North Dakota Century Code is created and enacted as follows:

49-21-33. Universal service policies. The state universal service fund created by this chapter:

1. May not duplicate the federal universal service fund mandated by the Telecommunications Act of 1996 but must complement the federal fund by providing additional funding as necessary to ensure universal service in this state;
2. Must be competitively and technologically neutral in both funding and distribution;
3. Must provide a specific, predictable, and sufficient mechanism of support for high-cost areas; and
4. Must provide that consumers in rural and high-cost regions of the state have access to telecommunications services that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.

SECTION 5. Section 49-21-34 of the North Dakota Century Code is created and enacted as follows:

49-21-34. Universal service fund established - Continuing appropriation.

- 1 1. Pursuant to a determination of need, the commission shall establish and administer
2 a fund to assist eligible telecommunications carriers in providing affordable
3 telecommunications services in high-cost areas. All moneys contributed to the
4 fund must be transferred to the state treasurer who shall deposit these moneys in
5 the universal service fund. All moneys in the universal fund are appropriated to the
6 commission or its agent for the purposes of this chapter. The fund must provide
7 support for the following services:
 - 8 a. Access to the public-switched network at a rate of at least one hundred
9 twenty-eight thousand baud, including some usage;
 - 10 b. Dual-tone multifrequency signaling or its equivalent;
 - 11 c. Single-party service;
 - 12 d. Access to emergency services, including access to 911, where available;
 - 13 e. Access to operator services;
 - 14 f. Access to interexchange services of the customer's choice; and
 - 15 g. Access to directory assistance.
- 16 2. The fund must support only access to the services listed in subdivisions d through
17 g in subsection 1 and not support the services themselves.
- 18 3. The fund must be administered to ensure that the operation of the fund is
19 competitively and technologically neutral.

20 **SECTION 6.** Section 49-21-35 of the North Dakota Century Code is created and
21 enacted as follows:

22 **49-21-35. Fund administrator.**

- 23 1. A fiscal agent and daily administrator must be selected to receive and distribute
24 funds under this section and sections 49-21-33, 49-21-34, 49-21-36, and 49-21-37.
- 25 2. The commission shall select the fiscal agent based upon a competitive bidding
26 process after an opportunity for public comment on the specific qualifications
27 required of the fiscal agent. A telecommunications carrier is not eligible to be the
28 fiscal agent. The duties of the fiscal agent must be determined by a contract
29 consistent with this section and sections 49-21-33, 49-21-34, 49-21-36, and
30 49-21-37.

1 3. The fiscal agent shall provide monthly reports of fund activities to the commission
2 and shall provide annual audits done by a certified public accountant in a manner
3 determined by and under the direction of the commission.

4 4. The fund financial accounts of the fiscal agent must be available at reasonable
5 times to any telecommunications carrier in the state and to the public. The
6 commission may investigate the accounts and practices of the fiscal agent and
7 enter orders concerning the accounts and practices.

8 **SECTION 7.** Section 49-21-36 of the North Dakota Century Code is created and
9 enacted as follows:

10 **49-21-36. Contributions to fund.**

11 1. The fiscal agent shall collect contributions from all telecommunications carriers on
12 a monthly basis, based on a July first to June thirtieth fiscal year, unless the
13 amount is de minimus as determined by the commission, then contributions must
14 be collected for a duration of time as determined by the commission. Initial
15 contributions to the fund may only be collected for the two-month period prior to the
16 effective date of distributions from the fund. Contributions must be calculated as
17 follows:

18 a. Determine the total retail revenue for all telecommunications carriers for the
19 immediately preceding calendar year;

20 b. Determine the total funds needed for distributions in the next fiscal year as
21 authorized pursuant to section 49-21-37;

22 c. Compute a uniform percentage of the amount determined in subdivision a that
23 will produce an amount equal to the fund total calculated in subdivision b;

24 d. Adjust the percentage multiplier computed in subdivision c to recover or
25 reimburse any fund shortfalls or excesses in the previous fiscal year, including
26 uncollectibles, new providers seeking support, cost of administration, and
27 auditing; and

28 e. Send notice of the current uniform percentage and appropriate remittance
29 forms to each telecommunications carrier at least two months before the
30 effective date of the application of the percentage.

2. The commission shall adopt procedural rules governing collection of the contributions required by this section and rules allowing the fiscal agent and daily administrator to assess late fees and interest on delinquent payments from telecommunications carriers. The fiscal agent is specifically authorized to enforce the contribution requirements of this section through suit in district court.

3. A carrier that receives funding shall reduce access rates to produce revenue neutral results. Any reduction in telecommunications carrier access expenses because of the removal of implicit subsidies inherent in telecommunications carrier access rates must be passed through to end-user customer retail rates in this state.

SECTION 8. Section 49-21-37 of the North Dakota Century Code is created and enacted as follows:

49-21-37. Distributions from fund - Calculation of costs.

1. Subject to the requirements of this section, payments from the fund must be made from collected contributions by the fiscal agent to qualifying eligible telecommunications carriers, on a monthly basis, pursuant to rules adopted by the commission.

2. Only an eligible telecommunications carrier that offers the telecommunications services described in subsection 1 of section 49-21-34 to all customers in a designated support area of a rural telephone company by using its own facilities or by a combination of its own facilities and resale of another carrier's service, including services offered by another eligible telecommunications carrier, and that advertises the availability of the telecommunications services and the charges for the telecommunications services using media of general distribution may receive support from the fund for the designated support area. An eligible telecommunications carrier qualified under this subsection to receive state universal service funds shall use the funds for the provision, maintenance, and upgrading of facilities and services for which the support is provided under this chapter. A telecommunications carrier receiving state universal service funding shall report annually to the fiscal agent on the expenditure of these funds.

- 1 3. Distributions must be calculated for the designated support areas established by
2 the commission. In the case of an area served by a rural telephone company, the
3 term "designated support area" means the rural telephone company's service area
4 in this state.
- 5 4. Support for the services listed in subsection 1 of section 49-21-34 must be
6 calculated as the difference between the costs determined in each designated
7 support area and the affordability benchmark in that support area. The
8 commission shall adopt rules to determine affordability benchmarks.
- 9 5. For rural telephone companies and other eligible telecommunications carriers
10 offering services in a designated support area served by a rural telephone
11 company, the average cost for each line must be calculated and submitted, based
12 on the preceding calendar year, to the fiscal agent as follows:
 - 13 a. If an additional eligible telecommunications carrier has not been designated
14 pursuant to subsection 3 of section 49-21-32, the rural telephone company's
15 total unseparated loop cost, as defined by federal separation rule
16 methodology, must be added to the switching costs, local transport costs, and
17 customer operations costs assigned to the telecommunications services set
18 forth in section 49-21-34, which must be calculated using the methodology set
19 forth in federal communications commission jurisdictional separation rules in
20 effect as of December thirty-first of each calendar year. This total cost must
21 be reduced by any federal universal service support, interstate allocation of
22 loop costs, and loop costs recovered through intrastate telecommunications
23 carrier common line charges to long-distance companies.
 - 24 b. Upon the designation of an additional eligible telecommunications carrier
25 pursuant to subsection 3 of section 49-21-32 in a designated support area
26 served by a rural telephone company, the additional eligible
27 telecommunications carrier has access to the fund on the same basis as the
28 rural telephone company. Upon the designation of the additional eligible
29 telecommunications carrier, the additional carrier must receive distributions
30 from the fund based upon that carrier's average cost for each line
31 disaggregated to geographic areas smaller than a wire center and the rural

1 telephone company must receive distributions from the fund based upon that
2 rural telephone company's average cost for each line disaggregated to
3 geographic areas smaller than a wire center. The support for each line for
4 each geographic area must be based upon that additional carrier's or that
5 rural telephone company's costs, as determined in subdivision a, distributed
6 to each of the geographic areas on the basis of relative distribution factors
7 established by a cost proxy model adopted by the commission.

8 6. An eligible telecommunications carrier providing telecommunications services
9 through resale of another telecommunications carrier's telecommunications
10 services or facilities may not receive support for those telecommunications
11 services or facilities if the rates charged to an eligible telecommunications carrier
12 by the other telecommunications carrier have been reduced by a contribution from
13 universal service funds under this section.

14 7. Costs of administering the fund must be paid from the fund.

15 **SECTION 9. REPEAL.** Section 49-21-01.8 of the North Dakota Century Code is
16 repealed.